

PATENT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant:	FAHEY ET AL.)	
)	Examiner A. Flanders
Appl. No.	09/972,381)	
)	Art Unit 2644
Confirm. No.	5141)	
)	Atty. Docket No. CS90041
Filed:	5 October 2001)	
Title:	"Mobile Wireless Communication Handset with Sound Mixer And Methods Therefor"		

APPEAL BRIEF UNDER 37 C.F.R. § 41.37(c)

Assistant Commissioner for Patents
Alexandria, Virginia 22313

Sir:

Real Party In Interest

The real party in interest is Motorola Inc., by virtue of an assignment duly executed by the named inventor(s) and recorded in the Patent Office on 5 October 2001, REEL/FRAME 012248/0156.

Related Appeals & Interferences

There are no related appeals or interferences.

Status of Claims

Claims 1-37 stand finally rejected under 35 USC 102(e) as being unpatentable over U.S. Publication No. 2001/017415 (Hruska).

Status of Amendments

No amendments have been filed subsequent to the mailing of the final Office Action on 2 June 2006.

Summary of Claimed Subject Matter

Independent Claim 1 is drawn to a method for creating a polyphonic audio mix on a handheld mobile wireless communication device having a soundtrack data set file stored thereon, including entering first and second reference data for first and second soundtracks of the soundtrack data set file into an audio mix data reference file by selecting first and second soundtracks. The audio mix data reference file having the first and second reference data representative of a user defined polyphonic audio mix. The audio mix data reference file having the first and second reference data is stored on the handheld mobile wireless communication device separately from the soundtrack data set file. Paragraphs [00010 & 00033-34], substitute specification filed on 1 October 2005 & FIG. 2-4.

Independent Claim 10 is drawn to a method for playing a polyphonic audio mix on a handheld mobile wireless communication device having a soundtrack data set file stored thereon, including playing first and

second soundtracks of the soundtrack data set file referenced in an audio mix data reference file, wherein the audio mix data reference file is devoid of soundtrack data of the soundtrack data set file, and the audio mix data reference file is stored separately from the soundtrack data set file on the handheld mobile wireless communication device. Paragraphs [00010 & 00033-34], substitute specification filed on 1 October 2005 & FIG. 2-4.

Independent Claim 14 is drawn to a method for a polyphonic audio mix on a handheld mobile wireless communication device having a soundtrack data set file and an audio mix data reference file stored separately thereon, including integrating the audio mix data reference file and the soundtrack data set file into an audio format file. The audio mix data reference file includes first and second soundtrack reference data referencing first and second soundtracks of the soundtrack data set file and the audio mix data reference file is devoid of soundtrack data from the soundtrack data set file. The audio format file is uploaded from the handheld mobile wireless communication device. Paragraphs [00010, 00033-34, 00042 & 00043], substitute specification filed on 1 October 2005 & FIG. 2-4.

Independent Claim 18 is drawn to a method for a polyphonic audio mix on a handheld mobile wireless communication device, including selecting a first soundtrack, playing the first soundtrack upon selecting the first soundtrack, selecting a second soundtrack while playing the first soundtrack, and playing the second soundtrack upon selecting the second soundtrack while playing the first soundtrack. Paragraphs [00010 & 00012-18], substitute specification filed on 1 October 2005 & FIG. 2-4.

Independent Claim 30 is drawn to a method for creating a polyphonic audio mix on a handheld mobile wireless communication device,

including playing a first soundtrack upon selecting the first soundtrack, selecting an audio characteristic for the selected first soundtrack while playing the first soundtrack, and paying the selected audio characteristic of the first soundtrack while playing the first soundtrack upon selecting the audio characteristic. Paragraphs [00010 & 00012-18], substitute specification filed on 1 October 2005 & FIG. 2-4.

Independent Claim 35 is drawn to a method for creating a polyphonic audio mix on a handheld mobile wireless communication device, including selecting a first soundtrack having a first time interval, selecting a second soundtrack having a second time interval, the second time interval different than the first time interval, and mixing the first and second soundtracks. Paragraphs [00010, 00012-18 & 00027-28], substitute specification filed on 1 October 2005 & FIG. 2-4.

Independent Claim 38 is drawn to a method for creating a polyphonic audio mix on a handheld mobile wireless communication device, including playing a first soundtrack by selecting the soundtrack, selecting one of a second soundtrack and an audio characteristic of the first soundtrack while playing first soundtrack, if the second soundtrack is selected, playing the second soundtrack with the first soundtrack upon selecting the second soundtrack without further input by user, if the audio characteristic is selected, playing the audio characteristic of the first soundtrack upon selecting the audio characteristic while playing the first soundtrack without further input by user. Paragraphs [00010 & 00012-18], substitute specification filed on 1 October 2005 & FIG. 2-4.

Grounds of Rejection for Review on Appeal

Whether Claims 1-37 are anticipated by U.S. Publication No. 2001/017415 (Hruska) under 35 USC 102(e).

Arguments

Allowability of Claim 1

Regarding independent Claim 1, contrary to the Examiner's assertion, Hruska fails to disclose or suggest a

- ... method for creating a polyphonic audio mix on a handheld mobile wireless communication device having a soundtrack data set file stored thereon, comprising:

- entering first reference data for a first soundtrack of the soundtrack data set file into an audio mix data reference file by selecting the first soundtrack,

- entering second reference data for a second soundtrack of the soundtrack data set file into the audio mix data reference file by selecting the second soundtrack,

- the audio mix data reference file having the first and second reference data representative of a user defined polyphonic audio mix;

- storing the audio mix data reference file having the first and second reference data on the handheld mobile wireless communication device separately from the soundtrack data set file.

In Hruska, the musical content consists of a MIDI file containing all the part patterns (musical tracks) and a control file containing control settings. Hruska, para. [0020-22 & 0024]. Hruska does not disclose an audio mix data reference file having reference data, wherein the reference file is stored separately from the soundtrack data file. In Hruska, the sound track

data files (musical patterns) are stored as part of the MIDI file. Claim 1 is thus patentably distinguished over Hruska.

Allowability of Claim 5

Regarding Claim 1, Hruska fails to disclose or suggest in combination with Claim 1

... entering the first reference data by selecting the first soundtrack,
entering second reference data by selecting the second soundtrack while the first soundtrack is playing,
playing the second soundtrack with the first soundtrack after selecting the second soundtrack.

The Examiner's references to various passages of Hruska to support the rejection are misplaced. At para. [0024], Hruska discusses a control file that defines an initial state of control parameters containing musical elements that can be re-arranged or changed during operation by the user. Hruska however fails to disclose dynamic mixing of soundtracks wherein a second soundtrack is played upon selecting the second soundtrack while a first sound track is playing. Claim 5 is thus patentably distinguished over Hruska.

Allowability of Claim 6

Regarding Claim 6, Hruska fails to disclose or suggest in combination with the limitations of Claim 1,

... entering the first reference data by selecting the first soundtrack,
entering first effect reference data for a first soundtrack effect of the soundtrack data set file by selecting the first soundtrack effect while the first soundtrack is playing,
playing the first soundtrack effect with the first soundtrack upon selecting the first soundtrack effect.

The Examiner's references to various passages of Hruska to support the rejection are misplaced. At para. [0024], Hruska discusses a control file that defines an initial state of control parameters containing musical elements that can be re-arranged or changed during operation by the user. Hruska however fails to disclose dynamic mixing of soundtracks wherein a second soundtrack effect is played upon selecting a second soundtrack effect while a first effect is playing. Claim 6 is thus patentably distinguished over Hruska.

Allowability of Claim 10

Regarding independent Claim 10, contrary to the Examiner's assertion, Hruska fails to disclose or suggest a

... method for playing a polyphonic audio mix on a handheld mobile wireless communication device having a soundtrack data set file stored thereon, comprising:
playing a first soundtrack of the soundtrack data set file referenced in an audio mix data reference file,
playing a second soundtrack of the soundtrack data set file referenced in the audio mix data reference file,
the audio mix data reference file devoid of soundtrack data of the soundtrack data set file,
the audio mix data reference file stored separately from the soundtrack data set file on the handheld mobile wireless communication device.

In Hruska, the musical content consists of a MIDI file containing all the part patterns (musical tracks) and a control file containing control setting. Hruska, para. [0020-22 & 0024]. Hruska does not disclose playing one or more soundtracks referenced in a reference file, wherein the reference file is stored separately from the soundtrack data file. In Hruska, the sound track data files (musical patterns) are stored as part of the MIDI file. Claim 10 is thus patentably distinguished over Hruska.

Allowability of Claim 14

Regarding independent Claim 14, contrary to the Examiner's assertion, Hruska fails to disclose or suggest a

- ... method for a polyphonic audio mix on a handheld mobile wireless communication device having a soundtrack data set file and an audio mix data reference file stored separately thereon, comprising:
 - integrating the audio mix data reference file and the soundtrack data set file into an audio format file,
 - the audio mix data reference file having first and second soundtrack reference data referencing first and second soundtracks of the soundtrack data set file,
 - the audio mix data reference file devoid of soundtrack data from the soundtrack data set file;
 - uploading the audio format file from the handheld mobile wireless communication device.

In Hruska, the musical content consists of a MIDI file containing all the part patterns (musical tracks) and a control file containing control setting. Hruska, para. [0020-22 & 0024]. Hruska does not disclose an audio mix data reference file devoid of soundtrack data from the soundtrack data set file. Thus Hruska cannot possibly integrate an audio mix data reference file and a soundtrack data set file into a single audio format file. In Hruska, the

sound track data files (musical patterns) are stored as part of a MIDI file. Claim 14 is thus patentably distinguished over Hruska.

Allowability of Claim 16

Regarding Claim 16, Hruska fails to disclose or suggest in combination with the limitations of Claim 14,

... before integrating, creating the audio mix data by entering first reference data for the first soundtrack into the audio mix data reference file and by entering second reference data for the second soundtrack into the audio mix data reference file.

Contrary to the Examiner's assertion, Hruska does not disclose an audio mix data reference file. Thus Hruska cannot possibly integrate an audio mix data reference file and a soundtrack data set file into a single audio format file. In Hruska, the sound track data files (musical patterns) are stored as part of a MIDI file. Claim 14 is thus patentably distinguished over Hruska

Allowability of Claim 18

Regarding independent Claim 18, contrary to the Examiner's assertion, Hruska fails to disclose or suggest a

... method for a polyphonic audio mix on a handheld mobile wireless communication device, comprising:
selecting a first soundtrack;
playing the first soundtrack upon selecting the first soundtrack;
selecting a second soundtrack while playing the first soundtrack;
playing the second soundtrack upon selecting the second soundtrack while playing the first soundtrack.

The Examiner's references to various passages of Hruska to support the rejection are misplaced. At para. [0020], Hruska discusses a MIDI file having a repeating musical pattern with 4 musical parts that may be rearranged by a user. At para. [0088], Hruska discusses a user interface for rearranging and mixing musical songs, and particularly 3 different levels: a first level for playing and mixing songs; a second level for instrument selection; and a third level for editing music. Hruska however fails to disclose dynamic mixing of audio tracks wherein a second soundtrack is played upon selecting the second soundtrack while the first sound track is playing. Claim 18 is thus patentably distinguished over Hruska.

Allowability of Claim 30

Regarding independent Claim 30, contrary to the Examiner's assertion, Hruska fails to disclose or suggest a

- ... method for creating a polyphonic audio mix on a handheld mobile wireless communication device, comprising:
 - playing a first soundtrack upon selecting the first soundtrack;
 - selecting an audio characteristic for the selected first soundtrack while playing the first soundtrack;
 - playing the selected audio characteristic of the first soundtrack while playing the first soundtrack upon selecting the audio characteristic.

The Examiner's references to various passages of Hruska to support the rejection are misplaced. At para. [0020], Hruska discusses a MIDI file having a repeating musical pattern with 4 musical parts that may be rearranged by a user. At para. [0088], Hruska discusses a user interface for rearranging and mixing musical songs, and particularly 3 different levels: a first

level for playing and mixing songs; a second level for instrument selection; and a third level for editing music. Hruska however fails to disclose dynamic mixing of a soundtrack and an audio characteristic for the sound track, wherein the characteristic is played upon selecting the characteristic while the first soundtrack is playing. Claim 30 is thus patentably distinguished over Hruska.

Allowability of Claim 34

Regarding independent Claim 34, contrary to the Examiner's assertion, Hruska fails to disclose or suggest a

... method for creating a polyphonic audio mix on a handheld mobile wireless communication device, comprising:
selecting a first soundtrack having a first time interval;
selecting a second soundtrack having a second time interval, the second time interval different than the first time interval;
mixing the first and second soundtracks.

The Examiner's references to various passages of Hruska to support the rejection are misplaced. At para. [0024], Hruska discusses a text control file that specifies the initial state (ON or OFF) music file parts. In FIG. 2 of Hruska, discussed at para. [0025], the numerical values are indicative of notes and tempo. Hruska does not disclose soundtracks having differing time intervals. Claim 34 is thus patentably distinguished over Hruska.

Allowability of Claim 37

Regarding Claim 37, contrary to the Examiner's assertion, Hruska fails to disclose or suggest a

... method for creating a polyphonic audio mix on a handheld mobile wireless communication device, comprising:
 playing a first soundtrack by selecting the soundtrack;
 selecting one of a second soundtrack and an audio characteristic of the first soundtrack while playing first soundtrack;
 if the second soundtrack is selected, playing the second soundtrack with the first soundtrack upon selecting the second soundtrack without further input by user,
 if the audio characteristic is selected, playing the audio characteristic of the first soundtrack upon selecting the audio characteristic while playing the first soundtrack without further input by user.

The Examiner's references to various passages of Hruska to support the rejection are misplaced. At para. [0020], Hruska discusses a MIDI file having a repeating musical pattern with 4 musical parts that may be rearranged by a user. At para. [0088], Hruska discusses a user interface for rearranging and mixing musical songs, and particularly 3 different levels: a first level for playing and mixing songs; a second level for instrument selection; and a third level for editing music. Hruska however fails to disclose dynamic mixing of audio tracks wherein a second soundtrack or soundtrack characteristic is played upon selection while a first sound track is playing. Claim 37 is thus patentably distinguished over Hruska.

Prayer For Relief

In view of the discussion above, the Claims of the present application are in condition for allowance. Kindly withdraw any rejections and objections and allow this application to issue as a United States Patent without further delay.

FAHEY ET AL.
"Mobile Wireless Communication Handset With
Sound Mixer And Methods Therefor"
Atty. Docket No. CS90041

Appl. No. 09/972,381
Confirm No. 5141
Examiner A. Flanders
Art Unit 2644

FAHEY ET AL.
"Mobile Wireless Communication Handset With
Sound Mixer And Methods Therefor"
Atty. Docket No. CS90041

Appl. No. 09/972,381
Confirm No. 5141
Examiner A. Flanders
Art Unit 2644

Respectfully submitted,

/ R K Bowler /

MOTOROLA, INC.
INTELLECTUAL PROPERTY DEPT. (RKB)
600 NORTH U.S. HIGHWAY 45, W4-37Q
LIBERTYVILLE, ILLINOIS 60048

ROLAND K. BOWLER II 27 SEPT. 2006
REG. NO. 33,477

TELEPHONE NO. (847) 523-3978
FACSIMILE NO. (847) 523-2350

CLAIMS APPENDIX

1. (Original) A method for creating a polyphonic audio mix on a handheld mobile wireless communication device having a soundtrack data set file stored thereon, comprising:

entering first reference data for a first soundtrack of the soundtrack data set file into an audio mix data reference file by selecting the first soundtrack,

entering second reference data for a second soundtrack of the soundtrack data set file into the audio mix data reference file by selecting the second soundtrack,

the audio mix data reference file having the first and second reference data representative of a user defined polyphonic audio mix;

storing the audio mix data reference file having the first and second reference data on the handheld mobile wireless communication device separately from the soundtrack data set file.

2. (Original) The method of Claim 1, entering first time data associated with the first reference data into the audio mix data reference file, entering second time data associated with the second reference data into the audio mix data reference file.

3. (Original) The method of Claim 1, entering tempo data associated with the user defined polyphonic audio mix into the audio mix data reference file.

4. (Original) The method of Claim 1, entering reference soundtrack data into the audio mix data reference file.

5. (Original) The method of Claim 1,
entering the first reference data by selecting the first soundtrack,
entering second reference data by selecting the second soundtrack
while the first soundtrack is playing,
playing the second soundtrack with the first soundtrack after
selecting the second soundtrack.

6. (Original) The method of Claim 1,
entering the first reference data by selecting the first soundtrack,
entering first effect reference data for a first soundtrack effect of
the soundtrack data set file by selecting the first soundtrack effect while the
first soundtrack is playing,
playing the first soundtrack effect with the first soundtrack upon
selecting the first soundtrack effect.

7. (Previously Presented) The method of Claim 1, integrating the
audio mix data reference file and the soundtrack data set file into an audio
format file.

8. (Previously Presented) The method of Claim 1, irreversibly
integrating the audio mix data reference file and the soundtrack data set file
into an audio format file.

9. (Original) The method of Claim 1, playing the user defined polyphonic audio mix on the handheld mobile wireless communication device by playing the first and second soundtracks of the soundtrack data set file referenced by the first and second reference data in the audio mix data reference file.

10. (Previously Presented) A method for playing a polyphonic audio mix on a handheld mobile wireless communication device having a soundtrack data set file stored thereon, comprising:

playing a first soundtrack of the soundtrack data set file referenced in an audio mix data reference file,

playing a second soundtrack of the soundtrack data set file referenced in the audio mix data reference file,

the audio mix data reference file devoid of soundtrack data of the soundtrack data set file,

the audio mix data reference file stored separately from the soundtrack data set file on the handheld mobile wireless communication device.

11. (Original) The method of Claim 10, playing the first and second soundtracks at times specified by the audio mix data reference file.

12. (Original) The method of Claim 10, playing the user defined polyphonic audio mix on the handheld mobile wireless communication device at a tempo specified by the audio mix data reference file.

13. (Previously Presented) The method of Claim 10, irreversibly integrating the audio mix data reference file and the soundtrack data set file into an audio format file.

14. (Currently Amended) A method for a polyphonic audio mix on a handheld mobile wireless communication device having a soundtrack data set file and an audio mix data reference file stored separately thereon, comprising:

integrating the audio mix data reference file and the soundtrack data set file into an audio format file,

the audio mix data reference file having first and second soundtrack reference data referencing first and second soundtracks of the soundtrack data set file,

the audio mix data reference file devoid of soundtrack data from the soundtrack data set file;

uploading the audio format file from the handheld mobile wireless communication device.

15. (Previously Presented) The method of Claim 14, irreversibly integrating the audio mix data reference file and the soundtrack data set file into the audio format file.

16. (Original) The method of Claim 14, before integrating, creating the audio mix data by entering first reference data for the first soundtrack into the audio mix data reference file and by entering second reference data for the second soundtrack into the audio mix data reference file.

17. (Original) The method of Claim 16, entering corresponding time data associated with the first and second reference data into the audio mix data reference file.

18. (Original) A method for a polyphonic audio mix on a handheld mobile wireless communication device, comprising:

- selecting a first soundtrack;
- playing the first soundtrack upon selecting the first soundtrack;
- selecting a second soundtrack while playing the first soundtrack;
- playing the second soundtrack upon selecting the second soundtrack while playing the first soundtrack.

19. (Original) The method of Claim 18, a soundtrack data set file including the first and second soundtracks stored on the handheld mobile wireless communication device,

- entering first reference data for the first soundtrack of the soundtrack data set file into an audio mix data reference file upon selecting the first soundtrack,

- entering second reference data for the second soundtrack of the soundtrack data set file into the audio mix data reference file upon selecting the second soundtrack,

- the audio mix data reference file representative of a user defined polyphonic audio mix;

- storing the audio mix data reference file on the handheld mobile wireless communication device.

20. (Original) The method of Claim 19, playing the user defined polyphonic audio mix on the handheld mobile wireless communication device by playing the first and second soundtracks of the soundtrack data set file referenced in the audio mix data reference file.

21. (Original) The method of Claim 18, selecting the first soundtrack from a first plurality of soundtracks perceptible by a user of the handheld mobile wireless communication device, selecting the second soundtrack from a second plurality of soundtracks perceptible by a user of the handheld mobile wireless communication device.

22. (Original) The method of Claim 18, at least one of the soundtracks is a reference soundtrack, selecting the reference soundtrack before selecting a subsequent soundtrack.

23. (Original) The method of Claim 22, selecting at least one subsequent soundtrack after selecting the reference soundtrack while the reference soundtrack is playing, mixing the at least one subsequent soundtrack selected with the reference soundtrack upon selecting the subsequent soundtrack.

24. (Original) The method of Claim 18, selecting the first soundtrack from a plurality of reference soundtracks each having corresponding rhythmic and harmonic characteristics.

25. (Original) The method of Claim 24, selecting the second soundtrack from a plurality of soundtracks having a corresponding melody.

26. (Original) The method of Claim 18, stopping the playing of the first soundtrack while the first and second soundtracks are playing.

27. (Original) The method of Claim 18, selecting an audio characteristic for at least one of the selected soundtracks while playing the soundtrack for which the audio characteristic is selected, changing the audio characteristic of the selected soundtrack while the soundtrack is playing upon selecting the audio characteristic.

28. (Original) The method of Claim 18, selecting a global audio characteristic common to all selected soundtracks while playing the selected soundtracks for which the global audio characteristic is selected, changing the audio characteristic of all selected soundtracks while the soundtracks are playing upon selecting the global audio characteristic.

29. (Original) The method of Claim 18, selecting the first soundtrack to play for a first time interval, selecting the second soundtrack to play for a second time interval different than the first time interval.

30. (Original) A method for creating a polyphonic audio mix on a handheld mobile wireless communication device, comprising:
playing a first soundtrack upon selecting the first soundtrack;

selecting an audio characteristic for the selected first soundtrack while playing the first soundtrack;

playing the selected audio characteristic of the first soundtrack while playing the first soundtrack upon selecting the audio characteristic.

31. (Original) The method of Claim 30, the first soundtrack is a reference soundtrack, selecting the first soundtrack from a plurality of different reference soundtracks, selecting a second soundtrack from a plurality of non-reference soundtracks while the reference soundtrack is playing, playing the second soundtrack upon selecting the second soundtrack while the reference soundtrack is playing.

32. (Original) The method of Claim 31, selecting the second soundtrack from a plurality of musical instrument soundtracks.

33. (Original) The method of Claim 30, stopping the playing of the first soundtrack, stopping the playing of the audio characteristic for the first soundtrack upon stopping the playing of the first soundtrack.

34. (Original) A method for creating a polyphonic audio mix on a handheld mobile wireless communication device, comprising:

selecting a first soundtrack having a first time interval;

selecting a second soundtrack having a second time interval, the second time interval different than the first time interval;

mixing the first and second soundtracks.

35. (Original) The method of Claim 34, if the time interval of the first and second soundtracks overlaps, selecting the second soundtrack while the first soundtrack is playing and playing the second soundtrack with the first soundtrack upon selection of the second soundtrack.

36. (Original) The method of Claim 34, saving an audio mix reference file corresponding to a polyphonic audio mix, the audio mix reference file referencing the first and second soundtracks stored in a separate file, playing the polyphonic audio mix by referencing the first and second soundtracks with the audio mix reference file.

37. (Previously Presented) A method for creating a polyphonic audio mix on a handheld mobile wireless communication device, comprising:

playing a first soundtrack by selecting the soundtrack;

selecting one of a second soundtrack and an audio characteristic of the first soundtrack while playing first soundtrack;

if the second soundtrack is selected, playing the second soundtrack with the first soundtrack upon selecting the second soundtrack without further input by user,

if the audio characteristic is selected, playing the audio characteristic of the first soundtrack upon selecting the audio characteristic while playing the first soundtrack without further input by user.

FAHEY ET AL.
"Mobile Wireless Communication Handset With
Sound Mixer And Methods Therefor"
Atty. Docket No. CS90041

Appl. No. 09/972,381
Confirm No. 5141
Examiner A. Flanders
Art Unit 2644

EVIDENCE APPENDIX

(None)

FAHEY ET AL.
"Mobile Wireless Communication Handset With
Sound Mixer And Methods Therefor"
Atty. Docket No. CS90041

Appl. No. 09/972,381
Confirm No. 5141
Examiner A. Flanders
Art Unit 2644

RELATED PROCEEDINGS APPENDIX

(None)